IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

Civil Application No.1884 of 2005
in
First Appeal 1368 of 2005.

New India Assurance Company ..Applicant

versus

Renu Bedprakash Singh ..Respondent.

Mr.I.R.Kulkarni for the Applicant

Mr.M.B.Kotak for the respondent No.1

Coram : Abhay S. Oka, J.
Dated : 20th December, 2007

P.C.

1. Heard advocate appearing for the applicant and the advocate for the first respondent.

2. The challenge by the applicant-insurer to the impugned award is broadly on three grounds. The first ground is that the deceased was travelling as an unauthorised passenger in a goods vehicle and therefore there is a breach of terms and conditions of the policy of insurance. The second submission is that the owners of both the vehicles involved in the accident ought to have been held liable. The third submission is that the quantum of compensation is on the higher side and instead of deducting 1/3rd

amount on account of personal expenditure, lesser amount has been deducted.

3. In so far as first contention is concerned, admittedly, applicant has not led any evidence to prove the breach. In so far as second contention is concerned, even if the said contention is accepted at the stage of final hearing, admittedly the other vehicle involved in the accident was validly insured and the insurer of the other vehicle is a party to the appeal. Therefore, in such situation, the applicant can always recover the compensation amount from the insurer of the other vehicle.

4. In so far as third submission is concerned, prima facie there is some merit in the said contention. Instead of deducting a sum of Rs.800/- on account of personal expenditure, the tribunal has made deduction of only Rs.500/-.

5. The advocate for the applicant states that now the entire amount due and payable as per the impugned award has been deposited by the applicant with the concerned tribunal. The statement is accepted.

6. As per the impugned award, the mother of the deceased has been ordered to be paid a sum of Rs.50,000/- by an Account payee cheque. A sum of Rs.1,00,000/- each has been ordered to be invested in the names of the minor children of the deceased till the age of attaining majority. A sum of Rs.1,00,000/- has been ordered to be invested in the name of the widow of the deceased for a period of two years and the balance amount is ordered to be paid to the widow by an Account payee cheque.

7. Prima facie, the impugned award is slightly on the higher side. Therefore, the Order of distribution made by the tribunal will have to be varied. Hence, the application is disposed of by passing following order.

ORDER

i. A sum of Rs.50,000/- (Rupees Fifty Thousand Only) shall be paid by Account payee cheque to the mother of the deceased (claimant No.5).

ii) The sum of Rs.1,00,000/- (Rupees One Lakh Only) each shall be invested in the names of the minor children (Original applicant Nos.2 and 3 respectively) in any nationalised bank. The fixed deposit shall be renewed from time to time till further orders. After the said minors attains majority, they are entitled to apply to the this Court for withdrawal of a reasonable amount.

iii) A sum of Rs.1,50,000/- (Rupees One Lakh Fifty Thousand Only) shall be paid by Account payee cheque to the widow (Claimant No.1).

iv) Rest of the amount shall be invested in fixed deposit in any nationalised bank till final disposal of the appeal. The widow will be permitted to withdraw the interest accrued on the fixed deposit.

v) The sum of Rs.25,000/- (Rupees

Twenty-five Thousand Only) deposited by the Applicant in this Court, as well as the compensation amount, if any, deposited in this court shall be immediately transferred to the concerned tribunal.

vi) There shall be no order as to costs.

(Judge.)